



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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SULLIVAN COUNTY COMMISSIONERS &  
ROBERT HEMENWAY, ADMINISTRATOR

Complainant

v.

AFSCME, COUNCIL 93, LOCAL 3438

Respondent

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CASE NO. A-0491:3

DECISION NO. 92-122

#### APPEARANCES

##### Representing Sullivan County Commissioners:

Kathleen C. Peahl, Esq., Counsel

##### Representing AFSCME, Local 3438:

Vincent A. Weners, Esq., Counsel

##### Also appearing:

Robert Hemenway, Administrator  
Richard Breed, Sullivan County  
James C. Anderson, AFSCME

#### BACKGROUND

The Sullivan County Commissioners (County) filed unfair labor practice (ULP) charges against AFSCME, Local 3438, Council 93 (Union) on February 13, 1992 alleging violations of RSA 273-A:5 II (d) and (f). The union filed its answer on March 2, 1992. This matter was then set for hearing and heard by the Board on June 30, 1992.

#### FINDINGS OF FACT

1. Sullivan County, through its Commissioners, is a public employer as defined by RSA 273-A:1 X and employs staff for the operation of the Sullivan

County Nursing Home.

2. AFSCME, Local 3438, Council 93 is the duly certified bargaining agent for employees of the Sullivan County Nursing Home.
3. The County and the Union were parties to a collective bargaining agreement which expired on December 31, 1991.
4. On October 30, 1991, the County, by memo from Robert Hemenway, advised its employees of an anticipated \$500,000 deficit because of a projected shortfall in medicaid revenues for FY 92, ending June 30, 1992. One of the cost savings techniques mentioned in that memo was "to freeze wages, effective December 1st, for a one year period."
5. After the October 30, 1991 memo was posted, Hemenway, the Nursing Home Administrator, advised the local union president, Judy McDonald, that the Commissioners were considering a wage freeze for bargaining unit employees in lieu of lay-offs.
6. Thereafter, McDonald advised Hemenway that the union membership would not vote for a freeze unless it had "iron clad" guarantees that there would be no layoffs and that the membership wanted to meet with the Commissioners about this issue. Such a meeting was held in November during which the length of the proposed wage freeze was discussed. Hemenway indicated that a one year duration was necessary in order to avoid prejudice to varying anniversary dates.
7. The Commissioners voted to and did implement a wage freeze for non-unit employees effective December 1, 1991 through November 30, 1992. Three non-unit employees were laid off.
8. When the Union had not approved a wage freeze by December 4, 1991, the County issued layoff notices to unit members, effective January 1, 1992.
9. On December 18-19, the union membership approved a wage freeze by a vote of 42 to 40. Two of the votes were challenged whereupon the vote did not become final until five (5) days thereafter. There is no evidence that the length of the freeze was reflected on the "ballot" since the membership voted only "yes" or "no" on the proposition of a freeze.
10. Following the voting of December 18-19, Hemenway was advised through a combination of communications

with McDonald and James Anderson AFSCME Staff Representative that the membership had approved the freeze. No reference was made by McDonald or Anderson as to the length of the freeze, only that it was approved.

11. The approval of the freeze by the union after Hemenway issued a memo on December 27, 1991 announcing that freeze for the period December 1, 1991 to November 30, 1992 and caused the layoff notices to bargaining unit members to be rescinded.
12. On January 2, 1992, Hemenway issued another memo to nursing home employees changing the effective date of the freeze for bargaining unit employees from December 1, 1991 to November 30, 1992, to January 1, 1991 to December 31, 1991 based on information that the union vote could approve the freeze by a majority only after the expiration of the current CBA on December 31, 1991. Otherwise, a two-thirds vote would have been required.
13. Prior to the commencement of mediation proceedings scheduled for January 6, 1992, Anderson informed Hemenway that the freeze voted by the membership extended only to the end of the fiscal year on June 30, 1992 and that Hemenway's memo of January 2, 1992 was in error.
14. By letter of January 10, 1992 from Anderson to Hemenway, Anderson said that the union approved the freeze through June 30, 1992 and that any employee who did not receive his/her step increase during the first six months of the year would then receive the increase at that time. He rejected conditions to the contrary in Hemenway's memo of January 2, 1992.
15. The Commissioners responded, through counsel, by letter from Kathleen Peahl, Esquire, to Anderson on January 23, 1992 saying that they had clearly expressed the one year duration when they met with the membership in November and that all employees be treated equally. They sought the Union's execution of a side-bar agreement reflecting the one year duration of the freeze from January 1, 1992 through December 31, 1992. The Union has declined to sign that agreement.

DECISION AND ORDER

We believe there must have been some communication between the Union and the County (Hemenway) between December 27, 1991 (when the County believed the freeze to be December 1 through November 30) and January 2, 1992, when the freeze period was "corrected" to run from January 1, 1992 through December 31, 1992. It is difficult for us to conceive that the parties could have discussed the effective date without considering or referencing the termination date, especially since a one-year duration was already referenced in the December 27, 1991 memo. This is compounded by the Union's ambiguity when it indicated to management that it had accepted the freeze. It had already been announced that non-unit employees would sustain a one-year freeze, by release of December 4th and memo of December 9th. The Commissioners emphasized their intention to treat all employees fairly by capitalizing "ALL" in their memo of October 30, 1991. We are troubled by the Union's attempting to take advantage of its own ambiguity in this situation.

The Union's ambiguity, obtained the recession of layoff notices due to become effective for its members on January 1, 1992. Again, it did not disclaim that it had voted for a freeze only until June 30, 1992. This did not occur until the mediation session on January 6, 1992.

We believe the membership knew it was dealing with a wage freeze of one year's duration when they voted on December 18-19, 1991. Further, through the manner in which the Union announced its acceptance of the freeze, it secured benefits for its members, i.e., the withdrawal of layoff notices. Having had the advantage of these benefits, the Union cannot escape its obligation to adhere to a freeze for one year, until January 1, 1993. By not acknowledging the wage freeze for a period of one year and by not signing a side bar agreement, the Union has breached its responsibility in dealing with the County and has committed a ULP under RSA 273-A:5 II (d) and (g).

1. The union committed a ULP by accepting benefits derived by the wage freeze vote and then not signing documentation memorializing that vote, in violation of RSA 273-A:5 II (d) and (g).

2. That the Union adhere to the wage freeze as is currently in effect until December 31, 1992.

So ordered.

Signed this 14th day of July, 1992.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members Seymour Osman and Richard E. Molan present and voting.